

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Dwain Lammey,

Plaintiff,

v.

Rains, LLC, a California Limited
Liability Company;
Sally Beauty Supply LLC, a
Virginia Limited Liability Company;
and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Dwain Lammey complains of Rains, LLC, a California Limited Liability Company; Sally Beauty Supply LLC, a Virginia Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a quadriplegic who uses a wheelchair for mobility.

2. Defendant Rains, LLC owned the real property located at or about 1831 S. La Cienega Blvd., Los Angeles, California, in November 2018.

1 3. Defendant Rains, LLC owns the real property located at or about 1831
2 S. La Cienega Blvd., Los Angeles, California, currently.

3 4. Defendant Sally Beauty Supply LLC owned Sally's Beauty Supply
4 located at or about 1831 S. La Cienega Blvd., Los Angeles, California, in
5 November 2018.

6 5. Defendant Sally Beauty Supply LLC owns Sally's Beauty Supply
7 ("Store") located at or about 1831 S. La Cienega Blvd., Los Angeles,
8 California, currently.

9 6. Plaintiff does not know the true names of Defendants, their business
10 capacities, their ownership connection to the property and business, or their
11 relative responsibilities in causing the access violations herein complained of,
12 and alleges a joint venture and common enterprise by all such Defendants.
13 Plaintiff is informed and believes that each of the Defendants herein,
14 including Does 1 through 10, inclusive, is responsible in some capacity for the
15 events herein alleged, or is a necessary party for obtaining appropriate relief.
16 Plaintiff will seek leave to amend when the true names, capacities,
17 connections, and responsibilities of the Defendants and Does 1 through 10,
18 inclusive, are ascertained.

19
20 **JURISDICTION & VENUE:**

21 7. The Court has subject matter jurisdiction over the action pursuant to 28
22 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24 8. Pursuant to supplemental jurisdiction, an attendant and related cause
25 of action, arising from the same nucleus of operative facts and arising out of
26 the same transactions, is also brought under California's Unruh Civil Rights
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is
2 located in this district and that Plaintiff's cause of action arose in this district.

3 **FACTUAL ALLEGATIONS:**

4 10. Plaintiff went to the Store in November 2018 with the intention to avail
5 himself of its beauty supplies, motivated in part to determine if the defendants
6 comply with the disability access laws.

7 11. The Store is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 12. Transaction counters are one of the facilities, privileges, and advantages
10 offered by Defendants to patrons of the Store.

11 13. Unfortunately, the Defendants crowded the transaction counters with
12 merchandise and displays, which narrowed the clear width of the counters to
13 less than 36 inches during plaintiff's visit. In fact, the clear width space was
14 about 18 inches in width.

15 14. Currently, the Defendants crowd the transaction counters with
16 merchandise and displays, which narrows the clear width of the counters to
17 less than 36 inches.

18 15. The Defendants have no policy in place to make sure that the
19 transaction counters are kept clear for persons with disabilities.

20 16. Paths of travel are another one of the facilities, privileges, and
21 advantages offered by Defendants to patrons of the Store.

22 17. Although there were shelves and merchandise aisles open to customers
23 for shopping, some of the paths of travel in and throughout these merchandise
24 aisles were not accessible to wheelchair users because defendants had a
25 practice of placing merchandise and merchandise displays on the route of
26 travel restricting passage to less than 36 inches in width.

27 18. In fact, the narrowest path of travel inside the Store was about 32 inches
28 wide. This is too narrow for wheelchair users.

1 19. Currently, although there are shelves and merchandise aisles open to
2 customers for shopping, some of the paths of travel in and throughout these
3 merchandise aisles are not accessible to wheelchair users because defendants
4 have a practice of placing merchandise and merchandise displays on the route
5 of travel restricting passage to less than 36 inches in width.

6 20. Defendants have failed to maintain in operable working condition those
7 features of facilities and equipment that are required to be readily accessible to
8 and usable by persons with disabilities at the Subject Property.

9 21. Plaintiff personally encountered these barriers.

10 22. This inaccessible facility denied the plaintiff full and equal access and
11 caused him difficulty.

12 23. The defendants have failed to maintain in working and useable
13 conditions those features required to provide ready access to persons with
14 disabilities.

15 24. The barriers identified above are easily removed without much
16 difficulty or expense. They are the types of barriers identified by the
17 Department of Justice as presumably readily achievable to remove and, in fact,
18 these barriers are readily achievable to remove. Moreover, there are numerous
19 alternative accommodations that could be made to provide a greater level of
20 access if complete removal were not achievable.

21 25. Plaintiff will return to the Store to avail himself of its goods or services
22 and to determine compliance with the disability access laws. He is currently
23 deterred from doing so because of his knowledge of the existing barriers. If the
24 barriers are not removed, the plaintiff will face unlawful and discriminatory
25 barriers again.

26 26. Given the obvious and blatant nature of the barriers and violations
27 alleged herein, the plaintiff alleges, on information and belief, that there are
28 other violations and barriers on the site that relate to his disability. Plaintiff will

1 amend the complaint, to provide proper notice regarding the scope of this
 2 lawsuit, once he conducts a site inspection. However, please be on notice that
 3 the plaintiff seeks to have all barriers related to his disability remedied. See
 4 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 5 encounters one barrier at a site, he can sue to have all barriers that relate to his
 6 disability removed regardless of whether he personally encountered them).

7
 8 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 9 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 10 Defendants.) (42 U.S.C. section 12101, et seq.)

11 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 12 again herein, the allegations contained in all prior paragraphs of this
 13 complaint.

14 28. Under the ADA, it is an act of discrimination to fail to ensure that the
 15 privileges, advantages, accommodations, facilities, goods and services of any
 16 place of public accommodation is offered on a full and equal basis by anyone
 17 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 18 § 12182(a). Discrimination is defined, inter alia, as follows:

- 19 a. A failure to make reasonable modifications in policies, practices,
 20 or procedures, when such modifications are necessary to afford
 21 goods, services, facilities, privileges, advantages, or
 22 accommodations to individuals with disabilities, unless the
 23 accommodation would work a fundamental alteration of those
 24 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
 25 b. A failure to remove architectural barriers where such removal is
 26 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 27 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 28 Appendix “D.”

1 c. A failure to make alterations in such a manner that, to the
2 maximum extent feasible, the altered portions of the facility are
3 readily accessible to and usable by individuals with disabilities,
4 including individuals who use wheelchairs or to ensure that, to the
5 maximum extent feasible, the path of travel to the altered area and
6 the bathrooms, telephones, and drinking fountains serving the
7 altered area, are readily accessible to and usable by individuals
8 with disabilities. 42 U.S.C. § 12183(a)(2).

9 29. Under the 2010 Standards, where the approach to the sales or service
10 counter is a parallel approach, such as in this case, there must be a portion of
11 the sales counter that is no higher than 36 inches above the floor and 36 inches
12 in width and must extend the same depth as the rest of the sales or service
13 counter top. 2010 Standards § 904.4 & 904.4.1.

14 30. Here, no such accessible, compliant transaction counters have been
15 provided at the Store. This is a violation of the ADA.

16 31. The minimum clear width of an accessible route shall be 36 inches.
17 2010 Standards § 403.5.1.

18 32. Here, the failure to provide accessible paths of travel inside the Store is
19 a violation of the ADA.

20 33. The Safe Harbor provisions of the 2010 Standards are not applicable
21 here because the conditions challenged in this lawsuit do not comply with the
22 1991 Standards.

23 34. A public accommodation must maintain in operable working condition
24 those features of its facilities and equipment that are required to be readily
25 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

26 35. Here, the failure to ensure that the accessible facilities were available
27 and ready to be used by the plaintiff is a violation of the law.
28

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

36. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

37. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

38. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

39. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the

1 plaintiff is not invoking section 55 of the California Civil Code and is not
2 seeking injunctive relief under the Disabled Persons Act at all.

3 2. Damages under the Unruh Civil Rights Act, which provides for actual
4 damages and a statutory minimum of \$4,000 for each offense.

5 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
6 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

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8 Dated: December 14, 2018 CENTER FOR DISABILITY ACCESS

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11 By: _____

12 Chris Carson, Esq.
13 Attorney for plaintiff
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